RECENT DECISIONS

CORPORATIONS—LIABILITY OF STOCKHOLDERS AFTER FORFEITURE OF STOCK TO THE THEN EXISTING CREDITORS OF THE CORPORATION.—The individual defendants purchased some of the stock of an oil company and paid one assessment. A second assessment was made, and the company, upon the failure of the defendants to pay such assessment, declared the stock delinquent and by virtue of statute put the stock up for sale. There being no other bids at this sale, the company bought in the stock offered. The statute was complied with and the sale treated as valid by both parties. There was no evidence of fraud or collusion between the company and defendants. Later the plaintiff recovered a judgment against the oil company on its note given prior to forfeiture. Upon this judgment execution was had and returned wholly unsatisfied, and thereupon this action was brought against the individual defendants for the balance due by them on their stock. *Held*, individual defendants not liable. *American, etc., Co.* v. *Blakemore* (Cal.), 193 Pac. 779.

The right of a corporation to sell or forfeit the shares of a stockholder for unpaid assessments did not exist at common law, but such a right is very generally given by statute. Some statutes further direct, that if at a sale of the delinquent stock there are no bidders, the corporation may bid in the stock offered. See *Stephens* v. *Lemoore, etc., Co.*, 22 Cal. App. 579, 135 Pac. 707. Such a forfeiture extinguishes all the rights and liabilities of the shareholder in the profits of, and his liabilities to the corporation. *Small* v. *Herkimer, etc., Co.*, 2 N. Y. 330.

The right of forfeiture given by the statute is for the benefit of the corporation, and the stockholder cannot abandon his shares at will, nor can he relieve himself from liability to the corporation and its creditors by withdrawal from the corporation. *Gaff* v. *Flesher*, 33 Ohio St. 107; *Chouteau* v. *Dean*, 7 Mo. App. 210. Nor can an insolvent corporation relieve the stockholder from his liability to corporation creditors by any agreement or arrangement to rescind the contract of subscription or to reduce the number of such stockholder's shares. *Moore* v. *United, etc., Co.*, 238 Ill. 544, 87 N. E. 536; *Upton* v. *Tribilcock*, 91 U. S. 45.

But a *bona fide* compromise has been held to be binding on the creditors as well as the corporation itself. *New Albany* v. *Burke*, 11 Wall. 96. And so, when the shares of a stockholder are validly forfeited under the authority conferred upon the corporation by statute, the relation between the stockholder and the corporation is thereby terminated and he is not liable thereafter to the corporate creditors for any balance due on his subscription, in the absence of fraud or collusion. *Mills* v. *Stewart*, 41 N. Y. 384. And if the transfer be made honestly, and without any intention of defeating the creditors, the mere fact that the purchaser was insolvent at the time of transfer, is not sufficient to hold the transferrer liable for the debts. *Miller* v. *Great Republic, etc., Co.*, 50 Mo. 55.